

117TH CONGRESS
1ST SESSION

S. 3410

To amend section 13 of the Federal Trade Commission Act to provide for equitable relief, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 15, 2021

Mr. LEE (for himself, Ms. LUMMIS, Mr. TILLIS, and Mr. HAWLEY) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend section 13 of the Federal Trade Commission Act to provide for equitable relief, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “The Consumer Protec-
5 tion and Due Process Act”.

6 **SEC. 2. AMENDMENTS TO THE FEDERAL TRADE COMMIS-**
7 **SION ACT.**

8 (a) PROVISION OF EQUITABLE RELIEF; AUTHORITY
9 TO REFER TO THE ATTORNEY GENERAL.—

1 (1) IN GENERAL.—Section 13 of the Federal
 2 Trade Commission Act (15 U.S.C. 53) is amended
 3 by adding at the end the following:

4 “(e) EQUITABLE RELIEF.—

5 “(1) RESTITUTION; CONTRACT RESCISSION AND
 6 REFORMATION; REFUNDS; RETURN OF PROPERTY
 7 RESPECTING UNFAIR OR DECEPTIVE ACTS OR PRAC-
 8 TICES.—

9 “(A) IN GENERAL.—Subject to paragraph
 10 (4), in a suit brought under subsection
 11 (b)(2)(B), the Commission may seek, and the
 12 court may order—

13 “(i) restitution for consumer loss that
 14 the court has a sound basis to conclude re-
 15 sulted from such violation;

16 “(ii) rescission or reformation of con-
 17 tracts; or

18 “(iii) the refund of property.

19 “(B) LIMITATIONS PERIOD.—In a suit
 20 brought under subsection (b)(2)(B), the Com-
 21 mission may bring a claim for relief under this
 22 paragraph not later than 3 years after the date
 23 on which the violation that gives rise to the suit
 24 in which the Commission seeks the claim oc-
 25 curs.

1 “(2) DISGORGEMENT RESPECTING UNFAIR OR
2 DECEPTIVE ACTS OR PRACTICES.—

3 “(A) IN GENERAL.—Subject to paragraph
4 (4), in a suit brought under subsection
5 (b)(2)(B), the Commission may seek, and the
6 court may order, disgorgement of any unjust
7 enrichment the court has a sound basis to con-
8 clude that a person, partnership, or corporation
9 obtained as a result of that violation.

10 “(B) CALCULATION.—Any amount that a
11 court orders a person, partnership, or corpora-
12 tion to pay under subparagraph (A) shall be
13 offset by any amount a court orders the person,
14 partnership, or corporation to pay or to return
15 under paragraph (1)(A) and shall not exceed
16 the net profits directly related to the violation
17 by the person, partnership, or corporation.

18 “(C) LIMITATIONS PERIOD.—In a suit
19 brought under subsection (b)(2)(B), the Com-
20 mission may bring a claim for disgorgement
21 under this paragraph not later than 3 years
22 after the date on which the violation that gives
23 rise to the suit in which the Commission seeks
24 the claim occurs.

1 “(3) CALCULATION OF LIMITATIONS PERI-
 2 ODS.—For purposes of calculating any limitations
 3 period under paragraph (1) or (2), any time in
 4 which a person, partnership, or corporation against
 5 which such equitable relief is sought is outside the
 6 United States shall not be counted for purposes of
 7 calculating such period.

8 “(4) BURDEN OF PROOF; PRESUMPTION.—

9 “(A) BURDEN OF PROOF.—The court may
 10 order equitable relief under paragraph (1) or
 11 (2) only if the Commission proves that—

12 “(i) the act or practice which relates
 13 to the violation that gives rise to the suit
 14 in which the Commission seeks such relief
 15 is an act or practice that a reasonable indi-
 16 vidual would have known, under the cir-
 17 cumstances, was unfair or deceptive within
 18 the meaning of section 5(a)(1); and

19 “(ii) a reasonable individual—

20 “(I) materially relied on such act
 21 or practice; and

22 “(II) such act or practice proxi-
 23 mately caused harm to the individual.

24 “(B) NO PRESUMPTION OF MATERIAL RE-
 25 LIANCE.—For purposes of subparagraph

1 (A)(ii)(I), the court may not presume that an
 2 individual materially relied on any unfair or de-
 3 ceptive acts or practices solely on the basis of
 4 a finding that such individual was exposed to
 5 such unfair or deceptive acts or practices.

6 “(f) REFERRAL BY THE COMMISSION.—In any action
 7 brought by the Commission under this section involving
 8 an unfair method of competition in which the court rules
 9 in favor of the Commission, the Commission may refer the
 10 action to the Attorney General to collect actual damages
 11 under section 4A(b) of the Clayton Act.”.

12 (2) CONFORMING AMENDMENTS.—Section 13 of
 13 the Federal Trade Commission Act (15 U.S.C. 53)
 14 is amended by striking subsection (b) and inserting
 15 the following:

16 “(b) TEMPORARY RESTRAINING ORDERS; PRELIMI-
 17 NARY AND PERMANENT INJUNCTIONS; OTHER RELIEF.—
 18 Whenever the Commission has reason to believe—

19 “(1) that any person, partnership, or corpora-
 20 tion has violated, is violating, or is about to violate
 21 any provision of law enforced by the Federal Trade
 22 Commission; and

23 “(2) that either—

24 “(A) the enjoining thereof pending the
 25 issuance of a complaint by the Commission and

1 until such complaint is dismissed by the Com-
2 mission or set aside by the court on review, or
3 until the order of the Commission made thereon
4 has become final, would be in the interest of the
5 public; or

6 “(B) the permanent enjoining thereof or
7 the ordering of equitable relief under subsection
8 (e) would be in the interest of the public,

9 the Commission by any of its attorneys designated by it
10 for such purpose may bring suit in a district court of the
11 United States to obtain such injunction or relief. In a case
12 brought under paragraph (2)(A), upon a proper showing
13 that, weighing the equities and considering the Commis-
14 sion’s likelihood of ultimate success, a temporary restrain-
15 ing order or preliminary injunction would be in the public
16 interest, and after notice to the defendant, a temporary
17 restraining order or a preliminary injunction may be
18 granted: *Provided, however,* That if a complaint is not filed
19 within such period (not exceeding 20 days) as may be
20 specified by the court after issuance of the temporary re-
21 straining order or preliminary injunction, the order or in-
22 junction shall be dissolved by the court and be of no fur-
23 ther force and effect: *Provided further,* That in a case
24 brought under paragraph (2)(B), after proper proof, the
25 court may issue a permanent injunction, equitable relief

1 under subsection (e), or any other relief as the court deter-
 2 mines to be just and proper, including temporary or pre-
 3 liminary equitable relief. Any suit under paragraph (2)
 4 may be brought where such person, partnership, or cor-
 5 poration resides or transacts business, or wherever venue
 6 is proper under section 1391 of title 28, United States
 7 Code. In addition, the court may, if the court determines
 8 that the interests of justice require that any other person,
 9 partnership, or corporation should be a party in such suit,
 10 cause such other person, partnership, or corporation to be
 11 added as a party without regard to whether venue is other-
 12 wise proper in the district in which the suit is brought.
 13 In any such suit, process may be served on any person,
 14 partnership, or corporation wherever it may be found.”.

15 (b) AMENDMENTS TO AUTHORITY TO COMMENCE OR
 16 DEFEND LITIGATION.—

17 (1) IN GENERAL.—Section 16(a)(2) of the Fed-
 18 eral Trade Commission Act (15 U.S.C. 56(a)(2)) is
 19 amended—

20 (A) in subparagraph (A), by striking “(re-
 21 lating to injunctive relief)”; and

22 (B) in subparagraph (B), by striking “(re-
 23 lating to consumer redress)”.

24 (2) TECHNICAL AMENDMENT.—Section
 25 16(a)(2)(D) of the Federal Trade Commission Act

1 (15 U.S.C. 56(a)(2)(D)) is amended by striking
2 “subpena” and inserting “subpoena”.

3 (c) APPLICABILITY.—The amendments made by sub-
4 sections (a) and (b) shall apply with respect to any action
5 or proceeding that is commenced on or after the date of
6 enactment of this Act.

7 **SEC. 3. ACTIONS BY THE ATTORNEY GENERAL.**

8 (a) IN GENERAL.—Section 4A of the Clayton Act (15
9 U.S.C. 15a) is amended—

10 (1) by striking “Whenever” and inserting “(a)
11 Whenever”; and

12 (2) by adding at the end the following:

13 “(b)(1) The Attorney General may bring a civil action
14 in the name of the United States, as parens patriae on
15 behalf of natural persons residing in the United States
16 who shall be injured in his or her business or property
17 by reason of anything forbidden in the antitrust laws, in
18 any district court of the United States in the district in
19 which the defendant resides or is found or has an agent,
20 without respect to the amount in controversy, and shall
21 recover the damages sustained by him or her, and the cost
22 of the suit, including a reasonable attorney’s fee.

23 “(2) No damages or costs may be recovered for the
24 same injury that was the basis for the action under that

1 paragraph in addition to any damages or costs awarded
2 in such action.”.

3 (b) APPLICABILITY.—The amendments made by sub-
4 section (a) shall apply with respect to any action or pro-
5 ceeding that is commenced on or after the date of enact-
6 ment of this Act.

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